

MEMORANDUM

NATIONAL SECURITY COUNCIL

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INFORMATION

July 12, 1972

MEMORANDUM FOR MR. KISSINGER

FROM: Helmut Sonnenfeldt *JS*

SUBJECT: Soviet Complaint about our Nuclear Fuel Policy

JS has seen

You may recall (my memorandum of April 27 at Tab A) that several months ago we approved a reply to be made to Dobrynin about a Soviet complaint that continued delivery of US nuclear material to EURATOM countries might violate the non-proliferation treaty. The Soviet position, expressed orally to Hillenbrand in early April, was that the NPT provisions require that the EURATOM states have a safeguards agreement with the IAEA if they were to continue getting such materials from us after March 1, and this agreement had not yet been concluded.

The reply which was cleared here has now been made (State's cable at Tab B) -- in the form of an oral statement by Davies to Vorontsov. The Soviet appeared relaxed, stating that his government understood our position and had wanted to make a technical point.

I now doubt that this issue will plague us, particularly since IAEA and EURATOM at present seem on their way to an early agreement.

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Authority *E.O. 12958*
By *PH* NARA Date *08/14/76*



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INR-06 L-03 NSAE-00 NSC-10 P-03 RSC-01 PRS-01 SS-14

USIA-12 SCI-05 /126 R

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APPROVED BY EUR:RTDAVIES

EUR/SOV:HSOKUN

L/SCI:EMAURER

SCI:HD:REWSTER (INFO)

IO:RKENT (INFO)

ACDA:CVANDOREN (INFO)

PM/AE:ATURRENTINE (INFO)

EUR/RPE:FHAENDLER (INFO)

AEC/DIP:DR.FRIEDMAN (INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY MOSCOW

INFO USMISSION EC BRUSSELS

USMISSION IAEA VIENNA

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SUBJ: NUCLEAR FUEL SUPPLY

REF: STATE 61728, APRIL 11, 1972

1. IN RESPONSE TO AN ORAL STATEMENT OF APRIL 10 (REPORTED REFTEL) MADE BY SOVIET AMBASSADOR DOBRYNIN TO ASSISTANT SECRETARY HILLENBRAND, ALLEGING A VIOLATION OF ARTICLE III OF THE NPT AS REGARDS CONTINUED U.S. SUPPLY OF NUCLEAR MATERIALS TO EURATOM COUNTRIES, DEPUTY ASSISTANT SECRETARY DAVIES CALLED IN MINISTER COUNSELOR VORONTSOV ON JULY 5 AND PRESENTED HIM WITH THE FOLLOWING U.S. REPLY IN THE FORM OF AN ORAL STATEMENT:

2. BEGIN TEXT

USG IS OF THE VIEW THAT NO CONTRAVENTION OF THE NON-PROLIFERATION TREATY IS INVOLVED. TO CONCLUDE THAT ARTICLE III (2) PROHIBITS THE CONTINUATION OF SUPPLIES AFTER MARCH 1, 1972 ON AN INTERIM BASIS IN A CASE SUCH AS THAT REFERRED TO IN YOUR ORAL STATEMENT OF APRIL 10, 1972, IT WOULD BE NECESSARY TO READ INTO ARTICLE III A PROVISION WHICH IT DOES NOT CONTAIN. THE CONTINUATION OF SUPPLIES TO THE EURATOM COUNTRIES IS A LEGALLY SOUND APPLICATION OF THE GENERALLY ACCEPTED PRINCIPLE OF TREATY CONSTRUCTION THAT, IN DEALING WITH A SITUATION SUCH AS THIS WHICH IS NOT CLEARLY PROVIDED FOR IN THE TREATY, ONE SHOULD CONSIDER ALL THE RELEVANT FACTS AND APPLY THE TREATY IN A REASONABLE MANNER DESIGNED TO GIVE EFFECT TO ITS BASIC PURPOSE. THE SECRETARY OF STATE HAS MADE THIS POINT PUBLICLY TO THE CONGRESS ON FEBRUARY 19, 1969, WHEN ASKED WHAT THE UNITED STATES MIGHT DO IN SUCH CASES.

THE BASIC PURPOSE OF THIS TREATY IS TO HELP PREVENT THE PROLIFERATION OF NUCLEAR WEAPONS BY ACHIEVING THE WIDEST POSSIBLE ADHERENCE TO THE TREATY'S UNDERTAKINGS. THE TREATY PROVIDES FOR "SAFEGUARDS AS SET FORTH IN AGREEMENTS TO BE NEGOTIATED AND CONCLUDED WITH THE IAEA." THE EUROPEAN COMMUNITY IS NEGOTIATING DILIGENTLY AND IN GOOD FAITH WITH IAEA ON SUCH AN AGREEMENT WITH VERY GOOD PROSPECTS FOR EARLY RESOLUTION. AT THIS DELICATE STATE OF NEGOTIATIONS BETWEEN IAEA AND THE EUROPEAN COMMUNITY,

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IT IS IN OUR MUTUAL INTEREST TO DO NOTHING THAT MIGHT IMPEDE THE PROGRESS BEING MADE OR UNDERMINE SUPPORT FOR THE TREATY IN THE STATES INVOLVED. THEREFORE, THE USG HAS DECIDED TO CONTINUE TO MAKE DELIVERIES UNDER SUPPLY CONTRACTS WITH THE EUROPEAN COMMUNITY ON AN INTERIM BASIS. WE BELIEVE THIS DECISION WILL CONTRIBUTE TO REALIZATION OF THE BASIC PURPOSE OF THE TREATY.

END TEXT

3. MR. VORONTSOV APPEARED RELAXED ABOUT THE SUBJECT. HE INDICATED HE UNDERSTOOD THE U.S. POSITION AND STATED THAT HIS GOVERNMENT HAD WANTED TO MAKE A TECHNICAL POINT.

GP*3 JOHNSON

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